United Nations A/73/188

General Assembly

Distr.: General
19 July 2018

Original: English

Seventy-third session
Item 74 (b) of the preliminary list*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, submitted in accordance with Human Rights Council resolution 37/8.

* A/73/50.

18-12002 (E) 310718

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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Summary

Pursuant to Human Rights Council resolution 37/8, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment submits his first report to the General Assembly. In the report, the Special Rapporteur recommends that the Assembly recognize the human right to a safe, clean, healthy and sustainable environment. Drawing on the extensive experience with this right at the national and regional levels, he explains why the time has come for such recognition by the United Nations.

I. Introduction and background to the mandate

1. The present report is the first report to the General Assembly of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

2. The Human Rights Council established this mandate in March 2012. In its resolution 19/10, it decided to appoint an independent expert with a mandate to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking. John H. Knox was appointed to the position in August 2012. In his first report (A/HRC/22/43), presented to the Council in March 2013, he emphasized that human rights and the environment are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and development. At the same time, the exercise of human rights, including the rights to information, participation and remedy, is vital to the protection of the environment.

3. Over the first two years of the mandate, the Independent Expert mapped the human rights obligations relating to the environment in more detail. He held a series of regional consultations and, with the help of attorneys and academics working pro bono, reviewed hundreds of statements of treaty bodies, regional human rights tribunals, special procedures mandate holders and other human rights authorities that had applied human rights norms to environmental issues. He described the statements in 14 reports, each of which addressed one source or set of sources. He found that, despite the diversity of the sources, their views on the relationship of human rights law and the environment were remarkably coherent. These views were summarized in his second report (A/HRC/25/53), presented in March 2014. Virtually every source reviewed identified human rights whose enjoyment was infringed or threatened by environmental harm, and the sources agreed that States had obligations under human rights law to protect against such harm. The obligations included procedural obligations (such as duties to provide information, facilitate participation and provide access to remedies), substantive obligations (including the obligation to regulate private actors) and additional obligations towards those in particularly vulnerable situations.

4. On the basis of his research and regional consultations, the Independent Expert also identified good practices in the use of these obligations. In his subsequent report to the Human Rights Council (A/HRC/28/61), presented in March 2015, he described more than 100 such good practices. He published more detailed descriptions of each of the good practices on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and made them available in a searchable database, http://environmentalrightsdatabase.org.

5. In March 2015, in its resolution 28/11, the Human Rights Council decided to extend the mandate for another three years, changed the title of the mandate holder to Special Rapporteur and encouraged him to continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote good practices relating to those obligations. He submitted reports on specific aspects of that relationship, including climate change and human rights, in 2016 (A/HRC/31/52), biodiversity and human rights, in 2017 (A/HRC/34/49), and children's rights and the environment, in 2018 (A/HRC/37/58).

6. In the same resolution, the Council encouraged the Special Rapporteur to promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to disseminate his findings by continuing to give particular emphasis to practical solutions with regard

to their implementation and to work on identifying challenges and obstacles to the full realization of such obligations. The Special Rapporteur presented a report in March 2016 with specific recommendations on the implementation of the human rights obligations relating to the environment (see A/HRC/31/53). In his second term, he promoted the implementation of the obligations in many ways, including by partnering with the United Nations Environment Programme (UNEP) on a series of judicial workshops on constitutional rights to a healthy environment, supporting the United Nations Institute for Training and Research in the development of an online course on human rights and the environment, and working with the Universal Rights Group to develop a website for environmental human rights defenders, www.environment-rights.org, as well as by undertaking country visits and receiving communications on violations.

7. With a view to facilitating the implementation of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur was also urged to develop and disseminate guidance that clearly describes the relevant norms and is easy to understand and apply (see A/HRC/31/53, para. 69). On the basis of his previous work and following extensive consultation with representatives of Governments, international organizations, civil society organizations and academics, he presented framework principles on human rights and the environment (A/HRC/37/59) to the Human Rights Council in March 2018 at its thirty-seventh session.

8. The 16 framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each framework principle has a commentary that elaborates on it and further clarifies its meaning. The framework principles and commentary do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context.

9. As the name "framework principles" indicates, they are intended to provide a sturdy basis for understanding and implementing human rights obligations relating to the environment, but they do not purport to describe all the human rights obligations that can currently be brought to bear on environmental issues, much less attempt to predict those that may evolve in the future. The goal was simply to describe the main human rights obligations that apply in the environmental context in order to facilitate their practical implementation and further development. To that end, the Special Rapporteur urged States, international organizations and civil society organizations to disseminate and publicize the framework principles and to take them into account in their own activities.

10. At its thirty-seventh session, the Human Rights Council adopted resolution 37/8, in which it extended the mandate for another three years. The Council took note with appreciation of the report presenting the framework principles on human rights and the environment, and called upon States to implement fully their obligations to respect and ensure human rights without distinction of any kind, including in the application of environmental laws and policies. The Council requested the Special Rapporteur:

(a) To study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, in consultation with Governments, relevant international organizations and intergovernmental bodies, including UNEP and the United Nations Development Programme, and relevant multilateral environment agreements, human rights mechanisms, local authorities, national human rights institutions, civil society organizations, including those representing indigenous peoples and other persons in vulnerable situations, the private sector and academic institutions;

(b) To identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policymaking;

(c) To promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, with an emphasis on practical solutions with regard to their implementation;

(d) To identify challenges, obstacles and protection gaps that are preventing the full realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(e) To contribute to and participate in intergovernmental conferences and meetings relevant to the mandate, including the United Nations Environment Assembly;

(f) To develop a dialogue, liaise and collaborate with all relevant stakeholders with a view to enhancing public awareness of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(g) To conduct country visits and to respond promptly to invitations from States;

(h) To apply a gender perspective by, inter alia, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities, and addressing good practices where women and girls act as agents of change in safeguarding and managing sustainably the environment;

(i) To work in close coordination, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, agencies, funds and programmes, including UNEP and the United Nations Development Programme, the treaty bodies and international and regional organizations, and multilateral environmental agreements, taking into account the views of other stakeholders, including relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;

(j) To submit an annual report, including conclusions and recommendations, to the Human Rights Council and to the General Assembly.

11. At its thirty-eighth session, the Human Rights Council appointed David R. Boyd, a professor at the University of British Columbia, as the Special Rapporteur. He will begin to serve on 1 August 2018. Because the present report was submitted by Mr. Knox before the conclusion of his term, but will be presented to the General Assembly by Mr. Boyd in October 2018, Mr. Knox consulted with Mr. Boyd in the preparation of the report. In effect, the report is a joint report of the current holder of the mandate and his successor.

II. "Greening" human rights

12. From the beginning of the modern environmental movement in the late 1960s, it has been clear that a healthy environment is necessary for the full enjoyment of human rights, including the rights to life and health. Fifty years ago, the General Assembly, in its resolution 2398 (XXII), decided to convene the first international environmental conference on the environment, noting its concern about the effects of "the continuing and accelerating impairment of the quality of the human environment ... on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as

developed countries". At the ensuing United Nations Conference on the Human Environment, held in Stockholm in 1972, Governments adopted a declaration in which it is stated, in the first paragraph of the proclamation, that "both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself".

13. In recent decades, human rights bodies have elaborated on the understanding that a healthy environment is of fundamental importance to the full enjoyment of a vast range of human rights. Treaty bodies, regional tribunals, special rapporteurs and other international human rights bodies have described how environmental degradation interferes with specific rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life. In effect, they have "greened" existing human rights. They have also explained that the obligations of States to respect, protect and fulfil human rights apply in the environmental context no less than in any other.

14. In the framework principles presented earlier in 2018 to the Human Rights Council, the Special Rapporteur summarizes the obligations of States under human rights law relating to the enjoyment of a safe, clean, healthy and sustainable environment. The framework principles include specific procedural obligations, such as the duties of States to respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters, provide for environmental education and public awareness, provide public access to environmental information, require the prior assessment of the possible environmental and human rights impacts of proposed projects and policies, provide for and facilitate public participation in decision-making related to the environment and provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

15. The framework principles also set out human rights obligations relating to substantive standards. Ideally, environmental standards would be set and implemented at levels that would prevent all environmental harm from human sources and ensure a safe, clean, healthy and sustainable environment. However, limited resources may prevent the immediate realization of the rights to health, food and water and other economic, social and cultural rights. The obligation of States to achieve progressively the full realization of these rights by all appropriate means[1] requires States to take deliberate, concrete and targeted measures towards that goal, but States have some discretion in deciding which means are appropriate in view of available resources.[2] Similarly, human rights bodies applying civil and political rights, such as the rights to life and private and family life, have held that States have some discretion in determining the appropriate levels of environmental protection, taking into account the need to balance the goal of preventing all environmental harm with other social goals.[3]

16. This discretion is not unlimited. One constraint is that decisions as to the establishment and implementation of appropriate levels of environmental protection must always comply with obligations of non-discrimination. Another constraint is the strong presumption against retrogressive measures in relation to the progressive realization of economic, social and cultural rights.[4] Other factors that should be taken

[1] See International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1.

[2] See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

[3] See, for example, European Court of Human Rights, *Hatton and others v. United Kingdom of Great Britain and Northern Ireland*, Application No. 36022/97, Judgment, 8 July 2003, para. 98; see also Rio Declaration on Environment and Development, principle 11.

[4] See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

into account in assessing whether environmental standards otherwise respect, protect and fulfil human rights include the following:

(a) The standards should result from a procedure that itself complies with human rights obligations, including those relating to the rights to freedom of expression, freedom of association and peaceful assembly, information, participation and remedy;

(b) The standards should take into account and, to the extent possible, be consistent with all relevant international environmental, health and safety standards, such as those promulgated by the World Health Organization;

(c) The standards should take into account the best available science. However, the lack of full scientific certainty should not be used to justify the postponement of effective and proportionate measures to prevent environmental harm, especially when there are threats of serious or irreversible damage.[5] States should take precautionary measures to protect against such harm;

(d) The standards must comply with all relevant human rights obligations. For example, in all actions concerning children, the best interests of the child must be a primary consideration;[6]

(e) The standards must not strike an unjustifiable or unreasonable balance between environmental protection and other social goals given the effects of the standards on the full enjoyment of human rights.[7]

17. Once adopted, the standards must be implemented and enforced to be effective. Governmental authorities must comply with the relevant environmental standards in their own operations. They must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities. In particular, States must regulate business enterprises to protect against human rights abuses resulting from environmental harm and to provide for remedies for such abuses.

18. Moreover, in accordance with the Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes, including human rights impact assessments, to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts that they cause or to which they contribute.

19. Many environmental challenges, such as climate change, ozone depletion, the loss of biological diversity, long-range air pollution, marine pollution, plastic pollution and trade in hazardous substances, have global or transboundary dimensions. The obligation of States to cooperate to achieve universal respect for and

[5] See Rio Declaration on Environment and Development, principle 15.

[6] See Convention on the Rights of the Child, art. 3, para. 1.

[7] For example, a decision to allow massive oil pollution in the pursuit of economic development could not be considered reasonable because of its disastrous effects on the enjoyment of the rights to life, health, food, water and a healthy environment (see African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, communication No. 155/96, 2001).

observance of human rights requires States to work together to address transboundary and global environmental threats to human rights. States have entered into agreements on many international environmental problems, including climate change, ozone depletion, transboundary air pollution, marine pollution, desertification and the conservation of biodiversity.

20. The obligation of international cooperation does not require every State to take exactly the same actions. The responsibilities that are necessary and appropriate for each State will depend in part on its situation, and agreements between States may appropriately tailor their commitments to take account of their respective capabilities and challenges. Multilateral environmental agreements often include different requirements for States in different economic situations and provide for technical and financial assistance from wealthy States to other States.

21. Once their obligations have been defined, however, States must comply with them in good faith. No State should ever seek to withdraw from any of its international obligations to protect against transboundary or global environmental harm. States should continually monitor whether their existing international obligations are sufficient. When those obligations and commitments prove to be inadequate, States should quickly take the steps necessary to strengthen them, bearing in mind that the lack of full scientific certainty should not be used to justify the postponement of effective and proportionate measures to ensure a safe, clean, healthy and sustainable environment.

22. Finally, human rights law requires States to take special care to respect, protect and fulfil the rights of those who are most at risk from environmental harm. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations (see Human Rights Council resolution 34/20). Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm or because they are denied their human rights, or both. Those who are at greater risk from environmental harm for either or both reasons often include women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, national, ethnic, religious or linguistic minorities and displaced persons. Many persons are vulnerable and subject to discrimination along more than one dimension, such as children living in poverty or indigenous women.

23. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. Traditional (sometimes called "local") communities that do not self-identify as indigenous may also have close relationships with their ancestral territories and depend directly on nature for their material needs and cultural life. Examples include the descendants of Africans brought to Latin America as slaves, who escaped and formed tribal communities. In order to protect the human rights of the members of such traditional communities, States have obligations towards them as well. The obligations of States towards indigenous peoples and traditional communities that are of particular relevance in the environmental context include the obligations to: (a) recognize and protect the rights of indigenous peoples and traditional communities to the lands, territories and resources that they have traditionally owned, occupied or used; (b) consult with them and obtain their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources; (c) respect and protect their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; and (d) ensure that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

24. Many other segments of the population can also be at risk from environmental harm. Examples of potential vulnerability include the following:

(a) In most households, women and girls are primarily responsible for water and hygiene. When sources of water are polluted, they are at greater risk of exposure to environmental contaminants. If women and girls must travel longer distances to find safer sources or sufficient quantities of water, they are deprived of educational and economic opportunities and are at greater risk of assault (see A/HRC/33/49). Nevertheless, women are too often excluded from decision-making procedures on water and sanitation;

(b) Children have little or no control over the environmental threats that they face, lack the knowledge and ability to protect themselves, and are developing physically. As a result, they are more susceptible to many types of environmental harm. Of the approximately 6 million deaths of children under the age of 5 in 2015, more than 1.5 million could have been prevented through the reduction of environmental risks. Moreover, exposure to pollution and other environmental harms in childhood can have lifelong consequences, including diminished mental capacity and an increased likelihood of cancer and other diseases (see A/HRC/37/58);

(c) Persons living in poverty often lack adequate access to safe water and sanitation. They are also more likely to burn wood, coal and other solid fuels for heating and cooking, causing household air pollution that contributes to respiratory and cardiovascular disease, as well as cancer;

(d) Older persons may be vulnerable to environmental harm because they are more susceptible to heat, pollutants and vector-borne diseases, among other factors;

(e) The vulnerability of persons with disabilities to natural disasters and extreme weather is often exacerbated by barriers to receiving emergency information in an accessible format and to accessing means of transport, shelter and relief;

(f) Because minorities are often marginalized and lack political power, their communities often become the sites of a disproportionate number of waste dumps, refineries, power plants, other polluting facilities and roads with high volumes of traffic, exposing them to higher levels of air pollution and other types of environmental harm;

(g) Natural disasters and other types of environmental harm often cause internal displacement and transboundary migration, which can exacerbate vulnerabilities and lead to additional human rights violations and abuses (see A/66/285 and A/67/299).

These vulnerabilities often overlap, such as in the case of women and children from minority groups who live in poverty, compounding the risks of environmental harm and the concomitant violation of their human rights.

25. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination[8] apply to the equal enjoyment of human

[8] See, for example, International Covenant on Civil and Political Rights, arts. 2, para. 1, and 26; International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2 and 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention on the Rights of the Child, art. 2; and Convention on the Rights of Persons with Disabilities, art. 5. The term "discrimination" in the present report refers to any distinction, exclusion, restriction or preference which is based on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (see Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 7).

rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others, to protect against environmental harm that results from or contributes to discrimination, to provide for equal access to environmental benefits and to ensure that their actions relating to the environment do not themselves discriminate. In order to protect the rights of those who are particularly vulnerable to or at risk from environmental harm, States must also ensure that their laws and policies take into account the ways that some parts of the population are more vulnerable or susceptible to environmental harm and the barriers that some face to exercising their human rights relating to the environment.

26. Finally, States have obligations to protect environmental human rights defenders, namely, individuals and groups striving to protect and promote human rights relating to the environment (see A/71/281, para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk. On average, four environmental defenders are killed every week because of their work, and countless more receive threats, suffer violence, are unlawfully detained or are otherwise harassed.

27. Like other human rights defenders, environmental human rights defenders are entitled to all the rights and protections set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, including the rights to be protected in their work and to strive for the protection and realization of human rights at the national and international levels. To that end, States must provide a safe and enabling environment for defenders to operate free from threats, harassment, intimidation and violence. The requirements for such an environment include that States adopt and implement laws that protect human rights defenders in accordance with international human rights standards;[9] publicly recognize the contributions of human rights defenders to society and ensure that their work is not criminalized or stigmatized; develop, in consultation with human rights defenders, effective programmes for protection and early warning; provide appropriate training for security and law enforcement officials; ensure the prompt and impartial investigation of threats and violations and the prosecution of alleged perpetrators; and provide for effective remedies for violations, including appropriate compensation (see A/66/203, A/71/281 and A/HRC/25/55, paras. 54–133).

III. National and regional recognition of the human right to a safe, clean, healthy and sustainable environment

28. In addition to the greening of human rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life, there has been a second critical development in the field of human rights and the environment since the General Assembly first took note of the nexus between those issues in 1968. This involves the emergence of a new human right: the right to a safe, clean, healthy and sustainable environment, or, more simply, the right to a healthy environment. The roots of this new human right can be traced back to the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 1972, in which, in the very first principle, it is stated that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

[9] See Model Law for the Recognition and Protection of Human Rights Defenders.

29. Since 1972, the right to a healthy environment has gained widespread public and legal recognition across the world. Governments have incorporated it into constitutions and environmental legislation. The right to a healthy environment has also been incorporated into regional human rights agreements and regional environmental treaties. Governments have made genuine efforts, with varying degrees of success, to respect, protect, fulfil and promote this right. Over the past forty years, national courts, regional tribunals, treaty bodies, special procedures and many international institutions have contributed to defining the content, scope and parameters of the right to a healthy environment, as well as its relationship with other human rights.

30. At the national level, Portugal became the first country to adopt a constitutional "right to a healthy and ecologically balanced human environment", in 1976, followed by Spain in 1978. Since then, the right to a healthy environment has gained constitutional recognition and protection in more than 100 States.[10] No other "new" human right has gained such widespread constitutional recognition so rapidly. About two thirds of the constitutional rights refer to a healthy environment; alternative formulations include rights to a clean, safe, favourable, wholesome or ecologically balanced environment. For example, according to article 112 of the human rights chapter of the Constitution of Norway: "Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well." In the bill of rights chapter of the Constitution of South Africa, it is stated that everyone has the right: (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.

31. Some States have also included procedural environmental rights in their constitutions, such as the rights to receive information, to participate in decision-making about environmental matters and to obtain access to the justice system if the right to a healthy environment is being violated or threatened.

32. Also at the national level, more than 100 States have enacted legislation that specifically identifies and articulates the right to a healthy environment, including both procedural and substantive elements. Examples include the National Environment Protection Act of Bhutan of 2007, in which it is succinctly stated that "a person has the fundamental right to a safe and healthy environment with equal and corresponding duty to protect and promote the environmental well-being of the country". The Environmental Code of France refers to "the individual's right to a healthy environment" (art. L110-2), "the recognized right of all to breathe air which is not harmful to health" (art. L220-1) and comprehensive rights related to environmental information, public participation and access to justice. In the Clean Air Act of the Philippines of 1999, section 4 offers more detailed provisions setting forth the substantive right to breathe clean air, as well as procedural rights to be informed of environmental hazards such as air pollution, to participate in environmental

[10] See David R. Boyd, "Catalyst for change: evaluating forty years of experience in implementing the right to a healthy environment", in *The Human Right to a Healthy Environment*, John H. Knox and Ramin Pejan, eds. (Cambridge, Cambridge University Press, 2018). See also David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, UBC Press, 2012); and James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge, Cambridge University Press, 2015.

decision-making and to bring actions in court to compel the rehabilitation and clean-up of contaminated areas.

33. At the regional level, human rights agreements drafted after the 1970s have also included the right to a healthy environment. The African Charter on Human and Peoples' Rights of 1981 provides that "all peoples shall have the right to a general satisfactory environment favourable to their development" (art. 24). In the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), it is stated that "everyone shall have the right to live in a healthy environment" (art. 11, para. 1). In 2003, the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in which it is stated that women shall have "the right to live in a healthy and sustainable environment" (art. 18) and "the right to fully enjoy their right to sustainable development" (art. 19). The Arab Charter on Human Rights of 2004 includes the right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). Similarly, the Human Rights Declaration adopted by the Association of Southeast Asian Nations in 2012 incorporates a "right to a safe, clean and sustainable environment" as an element of the right to an adequate standard of living (para. 28 (f)).

34. Also at the regional level, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) of 1998, drafted under the auspices of the Economic Commission for Europe, refers to "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" (art. 1). Finally, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), concluded and opened for signature in 2018, is a regional agreement similar to the Aarhus Convention but covering Latin America and the Caribbean. One of the objectives of the Escazú Agreement is "contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development" (art. 1). The agreement also requires that "each Party shall guarantee the right of every person to live in a healthy environment" (art. 4). The above-mentioned regional human rights agreements and environmental treaties, all explicitly recognizing the right to a healthy environment, have been ratified by more than 130 States to date.

35. At both the regional and national levels, human rights commissions and courts have played an active role in defining the scope of the right to a healthy environment and the corresponding obligations upon Governments. The African Commission on Human and Peoples' Rights produced a ground-breaking decision in 2001 in a case involving pollution caused by the oil industry that violated the Ogoni people's right to a healthy environment under the African Charter. The Commission determined that Governments have clear obligations "to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources".[11] In 2017, the Inter-American Court of Human Rights ruled that the right to a healthy environment under the Protocol of San Salvador protects individuals and collectives, including future generations, and can be used to hold States responsible for cross-border violations that are within their "effective control".[12] The Inter-American Court stated that: "Environmental damage can cause irreparable damage to human beings. As such, a healthy environment is a fundamental right for the existence of humanity." Although

[11] African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, para. 52.

[12] Inter-American Court of Human Rights, Advisory Opinion, OC-23-17, 15 November 2017.

the Convention for the Protection of Human Rights and Fundamental Freedoms does not include any explicit references to the environment, the jurisprudence of the European Court of Human Rights has repeatedly referred to the right to a healthy environment. For example, in a case involving the dangers of using sodium cyanide for gold mining in Romania, the European Court concluded that the State's failure to take positive steps to prevent an environmental disaster violated the rights to life, private and family life and, more generally, to the enjoyment of a healthy and protected environment.[13] Similarly, the European Committee of Social Rights has interpreted the right to protection of health in article 11 of the European Social Charter to include an implicit right to a healthy environment.[14]

36. Taking into consideration the ratification of regional human rights agreements and environmental treaties, constitutions and national legislation, more than 150 States have already established legal recognition of the right to a healthy environment, with corresponding obligations. Many additional States have signed non-binding international declarations that explicitly incorporate the right to a healthy environment, including the Stockholm Declaration of 1972 and the Malé Declaration on the Human Dimension of Climate Change of 2007. In total, 155 States have a binding legal obligation to respect, protect and fulfil the right to a healthy environment, while 36 States have expressed their support for the right to a healthy environment through non-binding international declarations.[15] In many States, however, there is a large gap between the legal recognition or expression of support for this right and the implementation of measures to effectively respect, protect, fulfil and promote this right.

IV. United Nations recognition of the human right to a safe, clean, healthy and sustainable environment

37. The time has come for the United Nations to formally recognize the human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment. It is understandable that the central United Nations human rights instruments — the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights — do not include an explicit right to a healthy environment. They were drafted and adopted before the modern environmental movement raised awareness of the breadth and depth of the environmental challenges facing humanity. Today, however, it is beyond debate that human beings are wholly dependent on a healthy environment in order to lead dignified, healthy and fulfilling lives. The ecological systems, biological diversity and planetary conditions that are the vital foundations of human existence are under unprecedented stress. Were the Universal Declaration of Human Rights to be drafted today, it is hard to imagine that it would fail to include the right to a healthy environment, a right so essential to human well-being and so widely recognized in national constitutions, legislation and regional agreements.

38. States may be understandably reluctant to recognize a "new" human right if its content appears to be uncertain or its implications seem unclear. One of the primary purposes of the decision of the Human Rights Council to establish this mandate,

[13] European Court of Human Rights, *Tatar v. Romania*, Application No. 67021/01, Judgment, 27 January 2009, paras. 107 and 112.

[14] See European Committee of Social Rights, *Marangopoulos Foundation for Human Rights* v. *Greece*, Complaint No. 30/2005, Decision on the Merits, 6 December 2006, para. 195.

[15] The only exceptions among the 193 States Members of the United Nations are the Democratic People's Republic of Korea and Oman.

beginning in 2012, was to clarify what human rights law requires with respect to environmental protection. As the extensive reports of the Special Rapporteur forcefully demonstrate, the human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been exhaustively discussed, debated, defined and clarified over the past 45 years.

39. Recognition of the right to a healthy environment by the United Nations would not only be consistent with the state of the law in most of the world, but would also provide a series of important and tangible benefits. It would raise awareness of and reinforce the understanding that human rights norms require protection of the environment and that environmental protection depends on the exercise of human rights. It would highlight that environmental protection must be assigned the same level of importance as other interests that are fundamental to human dignity, equality and freedom. It would also help to ensure that human rights norms relating to the environment continue to develop in a coherent, consistent and integrated manner. Recognition of the right to a healthy environment by the United Nations would complement, reinforce and amplify the regional and national norms and jurisprudence developed over the past 45 years.[16]

40. Examining experience at the national level demonstrates the many advantages of formal recognition of this right. Recognition of the right to a healthy environment in national constitutions has raised the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws, standards, regulations and policies. At least 80 States enacted stronger environmental laws in direct response to the incorporation of the right to a healthy environment into their national constitutions. In States including Argentina, Brazil, Colombia, Costa Rica, France, Portugal, South Africa and Spain, the right to a healthy environment is one of the fundamental principles shaping, strengthening and unifying the entire body of environmental law. In India, Nepal and Uganda, the right to a healthy environment has been used to fill legislative or regulatory gaps related to air pollution, plastic pollution and forest conservation.

41. Recognition of the right to a healthy environment enables individuals, government agencies, communities, indigenous peoples, civil society organizations and the judiciary to contribute to improved implementation and enforcement of environmental laws and, concurrently, greater respect for human rights. When applied by the judiciary, constitutional environmental rights have helped to provide a safety net to protect against gaps in statutory laws, created opportunities for better access to justice and, most importantly, contributed to stopping or preventing human rights violations. Courts in many States are increasingly applying the right, as is illustrated by the interest in the regional judicial workshops held by UNEP and the Special Rapporteur. Thousands of cases decided by courts in more than 50 States have involved alleged violations of the right to a healthy environment over the past four decades. An impressive example comes from Costa Rica, where the constitutional recognition of the right to a healthy environment in 1994 contributed to a significant increase in the implementation and enforcement of environmental laws. In cases involving solid waste, sewage treatment, air pollution, groundwater and endangered species, the Constitutional Court has protected the right to a healthy environment and ruled that it includes a number of key principles, including the precautionary, polluter-pays and intergenerational equity principles.

42. Recognition of the right to a healthy environment has also contributed to substantial increases in the role of the public in environmental governance. People and organizations are empowered by the procedural elements of this right, including

[16] See John H. Knox and Ramin Pejan, eds., *The Human Right to a Healthy Environment* (Cambridge, Cambridge University Press, 2018).

access to information, participation in decision-making and access to justice. In many nations that recogniz the right to a healthy environment, legislative processes, administrative procedures and courthouse doors are now open to citizens seeking to protect both their individual right to a healthy environment and society's collective interest in a healthy environment. According to the Environmental Democracy Index, Colombia, Latvia, Lithuania and South Africa are among the global leaders in enhancing access to justice to protect human rights, including the right to a healthy environment.[17] The Philippines has developed special rules of procedure for environmental litigation, which are specifically intended to facilitate protection of the right to a healthy environment.

43. Recognition of the right to a healthy environment has been a catalyst for national laws related to environmental education in States including Armenia, Brazil, the Philippines and the Republic of Korea. In addition, extensive efforts have been made by international agencies and the Special Rapporteur to educate judges, enforcement agencies, prosecutors and other groups involved in the implementation and enforcement of environmental laws about the right to a healthy environment.

44. The ultimate test in evaluating the right to a healthy environment is whether it contributes to healthier people and healthier ecosystems. The evidence in this regard is strikingly positive. One study concluded that nations with the right to a healthy environment in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators, are more likely to ratify international environmental agreements and have made faster progress in reducing emissions of sulphur dioxide, nitrogen oxides and greenhouse gases than nations without such provisions.[18] A second analysis, published in 2016 by two economists, determined that constitutional environmental rights have a positive causal influence on environmental performance.[19] A third study, also published in 2016, found that constitutional environmental rights are positively related to increases in the proportion of populations with access to safe drinking water.[20] Other studies have also found positive effects flowing from constitutional recognition of environmental rights.[21] In other words, as a result of the legal recognition of their right to a healthy environment, many millions of people are breathing cleaner air, have gained access to safe drinking water, have reduced their exposure to toxic substances and are living in healthier ecosystems.

45. Of particular importance are the positive effects of the recognition of the right to a healthy environment on vulnerable populations, including women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, minorities and displaced persons. Respecting and fulfilling the right to a healthy environment should ensure a minimum level of environmental quality for all members of society, consistent with international standards, with a particular emphasis on those populations that currently shoulder a disproportionate share of the burden of pollution and other environmental harms or that do not enjoy adequate access to essential environmental goods and services, such as

[17] See https://environmentaldemocracyindex.org/rank-countries#all.

[18] See David R. Boyd, *The Environmental Rights Revolution*.

[19] Christopher Jeffords and Lanse Minkler, "Do constitutions matter? The effects of constitutional environmental provisions on environmental outcomes", *Kyklos*, vol. 69, No. 2 (April 2016), pp. 294–335.

[20] Christopher Jeffords, "On the temporal effects of static constitutional environmental rights provisions on access to improved sanitation facilities and water sources", *Journal of Human Rights and the Environment*, vol. 7, No. 1 (March 2016), pp. 74–110.

[21] Joshua C. Gellers and Christopher Jeffords, "Toward environmental democracy? Procedural environmental rights and environmental justice", *Global Environmental Politics*, vol. 18, No. 1 (February 2018), 99–121.

safe water and adequate sanitation. A leading example is the progress made in respecting the right to a healthy environment of impoverished communities in the heavily polluted Matanza-Riachuelo watershed in Argentina following a powerful decision of the Supreme Court of Argentina in 2008. After confirming that the citizens' constitutional right to a healthy environment had been violated by extensive industrial pollution, the court ordered all levels of government and relevant businesses to undertake comprehensive remedial action, including pollution abatement, environmental remediation and clean-up, and infrastructure improvements. A decade after the court's decision, there have been substantial improvements in environmental quality (air, water and soil), and new drinking water and wastewater treatment infrastructure has been constructed. While the environmental problems facing the residents of this long-standing pollution hotspot are not completely solved, the extent of progress is impressive. It is worth noting that, in nations facing severe challenges with the rule of law or extreme poverty, the right to a healthy environment, like many human rights, is less likely to make a significant tangible impact on people's lives.

46. On the basis of the extensive experience with the right to a healthy environment and its critical importance in protecting human rights threatened by the multiple current environmental challenges, the Special Rapporteur recommends that the General Assembly recognize the right in a global instrument. One possible vehicle for such recognition would be a new international treaty. The Special Rapporteur notes that, in 2017, the Government of France presented for consideration a global pact for the environment, in which it is stated, in article 1, that "every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment". In May 2018, the General Assembly adopted resolution 72/277, entitled "Towards a Global Pact for the Environment", in which it established an ad hoc open-ended working group to discuss possible options to address gaps in international environmental law and environment-related instruments. If necessary, the working group will discuss the scope, parameters and feasibility of an international instrument and make recommendations to the Assembly, which may include the convening of an intergovernmental conference to adopt such an international instrument during the first half of 2019. An instrument resulting from this process certainly could and should include recognition of the human right to a healthy environment.

47. A second option would involve the development of an additional protocol to an existing human rights treaty. For example, the right to a safe, clean, healthy and sustainable environment could be the focus of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. This would be a logical choice in view of the fact that many national constitutions incorporate the right to a healthy environment into the same chapter as economic, social and cultural rights. A second optional protocol to the International Covenant on Economic, Social and Cultural Rights recognizing the right to a healthy environment, as an issue-specific instrument, would be comparable to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. Furthermore, the individual complaints mechanism established by the recent Optional Protocol to the International Covenant on Economic, Social and Cultural Rights could provide an important forum for addressing alleged human rights violations caused by environmental degradation.

48. A third and potentially more expeditious approach would be for the General Assembly to adopt a resolution focused on the right to a healthy environment. A model could be the resolution in which the Assembly recognized the rights to water and sanitation, which, like the right to a healthy environment, were not explicitly recognized in United Nations human rights treaties but are clearly necessary to the full enjoyment of human rights. In 2010, in its resolution 64/292, the Assembly

recognized the rights to safe and clean drinking water and sanitation as human rights that are essential for the full enjoyment of life and all human rights. The content of the rights to water and sanitation had been addressed in detail by the Committee on Economic, Social and Cultural Rights and the first Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, before the Assembly acted in 2010.

49. Through any of the foregoing mechanisms, which are not mutually exclusive, recognition of the right to a safe, clean, healthy and sustainable environment by the United Nations would serve as acknowledgement that the right to a healthy environment must be universally protected (rather than subject to the current patchwork of protection measures), serve as an impetus for more nations to incorporate this right into their constitutions and legislation and potentially provide a mechanism for increased accountability where national governments violate or fail to protect this vital human right. Global recognition of the right to a healthy environment would also result in new reporting requirements (e.g., as part of the universal periodic review of the Human Rights Council) that would further raise the profile of this issue both politically and publicly. It would also support and advance the work of UNEP through its recently launched environmental rights initiative.

50. The proposal to recognize the right to a healthy environment meets the procedural and substantive requirements that have been established over time by the General Assembly to govern the proclamation of new human rights within the United Nations system. In 1986, the Assembly, in paragraph 4 of its resolution 41/120, adopted guidelines indicating that new human rights instruments should:

(a) Be consistent with the existing body of international human rights law;

(b) Be of fundamental character and derive from the inherent dignity and worth of the human person;

(c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;

(d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;

(e) Attract broad international support.

51. Each of these five requirements has clearly been met.[22] The links between a healthy environment, human dignity and human rights have been recognized since the adoption of the Stockholm Declaration in 1972. Extensive experience with the right to a healthy environment has been gained at the national and regional levels over four decades. In his previous reports, including his mapping reports,[23] the Special Rapporteur catalogued the large and strikingly consistent body of norms, principles and obligations governing the relationship between human rights and environmental degradation that has been developed by treaty bodies, the Human Rights Council, special procedures and regional human rights tribunals. The Council has provided a useful platform for intergovernmental discussions since 2011, when it requested, in its resolution 16/11, OHCHR to prepare a study on human rights and the environment. UNEP and OHCHR have provided expert advice on technical matters related to the right to a healthy environment since 2002, including through expert seminars, high-level meetings, side events at international forums and high-quality publications. In

[22] See Marcos Orellana, "Quality control of the right to a healthy environment", in *The Human Right to a Healthy Environment*, John H. Knox and Ramin Pejan, eds. (Cambridge, Cambridge University Press, 2018).

[23] Available at www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx.

summary, enough preparatory work has been completed. There has been a rich and comprehensive analysis of the elements, implications and obligations related to the right to a healthy environment. This analysis has been complemented by broad, long-standing consultations and political discussions involving Governments, international and intergovernmental organizations and civil society.

52. The recognition by the United Nations of a universal right to a safe, clean, healthy and sustainable environment would be very timely in view of the multiple ecological challenges facing the world. The World Health Organization reports that nearly one quarter of the global burden of disease is caused by exposure to environmental hazards in the air we breathe, the water we drink, the food we eat and the buildings and communities in which we live.[24] Despite the Paris Agreement, global emissions of greenhouse gases continue to rise, exacerbating the present and future impacts of climate change on human well-being. Despite the Convention on Biological Diversity, growing numbers of species are becoming endangered and extinct, with grave consequences for human rights and well-being. Although recognition of the right to a healthy environment is not a silver bullet that will solve these problems overnight, it will empower and inspire people throughout the world.

V. Conclusions and recommendations

53. **The relationship between human rights and the environment has evolved rapidly over the past five decades, and even more so over the past five years. The greening of well-established human rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life, has contributed to improvements in the health and well-being of people across the world. However, work remains to be done to further clarify and, more importantly, implement and fulfil the human rights obligations relating to a safe, clean, healthy and sustainable environment. Of paramount importance in this regard is the legal recognition of the right to a healthy environment at the global level, so that this fundamental human right can be enjoyed by all persons in all States, rather than in the subset of countries where it is currently recognized. The global recognition of this right would fill a glaring gap in the architecture of international human rights.**

54. **There can be no doubt that the right to a healthy environment is a moral right, essential to the health, well-being and dignity of all human beings. However, to ensure that this right is respected, protected and fulfilled, it requires legal protection. Tremendous progress has been made in this regard over the past four decades. The right to a healthy environment enjoys constitutional protection in more than 100 States. It is incorporated into the environmental legislation of more than 100 States. This right is included in regional human rights treaties and environmental treaties ratified by more than 130 States. In total, 155 States have already established legal recognition of the right to a healthy environment. Recognition of the right to a healthy environment by the United Nations would not only make this right universal in application but would also serve as a catalyst for the implementation of stronger measures to effectively respect, protect, fulfil and promote this right.**

55. **National and regional experiences demonstrate the potential benefits of recognizing the right to a healthy environment, namely:**

[24] World Health Organization, *Preventing Disease Through Healthy Environments: A Global Assessment of the Burden of Disease from Environmental Risks* (Geneva, World Health Organization, 2016).

- **Stronger environmental laws and policies**
- **Improved implementation and enforcement**
- **Greater public participation in environmental decision-making**
- **Reduced environmental injustices**
- **A level playing field with social and economic rights**
- **Better environmental performance**

56. **The evidence presented in the present report clearly demonstrates that legal recognition of the right to a healthy environment in some States has contributed to cleaner air, safer water and healthier ecosystems. These benefits are vitally important to vulnerable populations, including women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, minorities and displaced persons.**

57. **The Special Rapporteur therefore strongly recommends that Member States expedite the consideration of the three options outlined in paragraphs 46 to 48 of the present report for global recognition of the right to a safe, clean, healthy and sustainable environment. The three options are a new international treaty, such as the proposed global pact for the environment, a new optional protocol to the International Covenant on Economic, Social, and Cultural Rights and a General Assembly resolution focused on the right to a healthy environment. In view of the major global environmental problems that are currently causing tremendous hardship for many millions of people throughout the world, this ought to be a matter of the utmost urgency for the General Assembly.**

58. **In the meantime, the Special Rapporteur also recommends that all States dedicated to protecting the health of both humans and the ecosystems on which the well-being of humans depends move expeditiously to incorporate the right to a healthy environment into their constitutional, legal and policy frameworks. States in Latin America and the Caribbean should promptly sign and ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), while other States should consider becoming parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).**

59. **The Special Rapporteur is honoured to be part of an extensive global movement of people dedicated to the essential tasks of defending human rights and protecting the environment. In every country and every community there are women and men, girls and boys, courageously speaking out and taking action. They understand the intimate and indivisible relationship between human rights and the environment, as well as the fundamental reliance of humans on healthy ecosystems for life, well-being and dignity. They need and deserve the support of Governments, international institutions, national human rights institutions, businesses, judiciaries and civil society organizations. The recognition by the United Nations of a universal right to a healthy environment would be a profoundly meaningful way to empower, energize and inspire their continued efforts. Given the importance of clean air, safe water, healthy ecosystems and a stable climate to the ability of both current and future generations to lead healthy and fulfilling lives, global recognition of the right to a safe, clean, healthy and sustainable environment should be regarded as an urgent moral imperative.**